

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MONSANTO COMPANY and  
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

VS.

E.I. DUPONT DE NEMOURS AND  
COMPANY and PIONEER HI-BRED  
INTERNATIONAL, INC.,

Defendants.

Case No. 4:09-cv-00686-ERW

**RESPONSE TO DEFENDANTS' SEPTEMBER 15, 2011 MOTION TO STRIKE**

In asking the Court to strike part of Monsanto’s September 12, 2011 letter to the Court, Defendants seek controversy where none exists. Monsanto included its letter with the materials submitted to chambers to assist the Court in its *in camera* review of Defendants’ privilege assertions—not to incite yet another round of briefing on these issues.

As the Court knows, its August 30, 2011 Order instructed the parties first to exchange any additional objections to each other's privilege assertions, then to meet and confer on those objections, and finally, if those objections could not be resolved, to file a notice with the Court identifying no more than 100 documents from the opposing party's log for the Court to review. (Dkt. 853 at 2). Monsanto filed its notice on September 12, 2011. (Dkt. 875). As part of its notice, Monsanto provided a letter to the Court briefly explaining the nature of its remaining challenges to Defendants' privilege log. Monsanto attached that letter and all supporting exhibits to its filing and served all of that information on Defendants.

Monsanto provided its letter solely to help the Court understand why Monsanto has challenged these particular 100 documents. Without the letter, the Court would only have the Defendants' own description of the privilege basis—not Monsanto's basis for concluding that

those privilege assertions are erroneous. For example, as Monsanto noted in its letter, former DuPont and Pioneer in-house attorneys Daniel Jacobi and Jeff Rowe have transitioned to business positions within DuPont and Pioneer. Monsanto has challenged certain purportedly privileged communications with those two individuals that took place after they had moved to non-legal positions. This information would not likely have been apparent to the Court during its *in camera* review. Monsanto's letter was simply an effort to provide the Court that information.

In short, Monsanto's letter was solely intended to assist the Court. Monsanto is confident that the Court, in its own discretion, can decide whether such information is indeed helpful or whether it should be stricken.

Dated: September 26, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 26<sup>th</sup> day of September, 2011, the foregoing was served by electronic mail pursuant to agreement of counsel, upon the following:

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